

## HELLO AGAIN

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**A PERSONAL NOTE:** Pam and James O'Neal, two old friends and subscribers, just had their second child, Andrew James...OTR got a boost from the **Movie/Entertainment Book Club**, 15 Oakland Ave, Harrison, NY 10528. There was a nice blurb about our convention and Hello Again.

**REMINISCING:** From **HELLO AGAIN, Vol. 1 No. 4, JULY, 1970:** If an asterisk (\*) is next to a name, it means I have lost touch with the collector and would like to know about his (her) whereabouts. I had 3 pages for beginning collectors which is now part of my **GUIDE FOR COLLECTORS**...I asked what program had for its theme, "The Whistler and His Dog." I received no answer and still know of no radio program...I asked the question, "Does double speeding in dubbing reels hurt the quality of the program?" Although many claimed it did at that time, the results were negligible. Most collectors used double speeding. What do you do today? I believe that most dealers use faster speeds in dubbing reels and cassettes, especially in copying entire reels or cassettes as most do...I also asked about tape brands and print through and drop out in years to come. Shamrock and Concert tape were popular and some collectors felt that there would be problems in later years. One reader taped Long John Nebel shows in 1957 on relative inexpensive tape and has experienced no dropout (13 years).

**New Friends** in July were Darrell Anderson\*, Raleigh Barker (newcomer to trading), Tom Cole\*, Paul Groy, Steve Hofar\*, Richard Hayes (has large list including big bands), Fred McFadden (has extensive number of programs with Judy Garland).

**Old Friends** in July: Roger Hill is working this summer as a shelter survey technician for the Office of Civil Defense. Bruce Ruggles is program director for Radio Station CFCH in North Bay, Canada. He is 41 years old and started collecting in 1965. Chuck Schaden has an OTR program on WNMP, Chicago, every Saturday from 1 - 4. It is sponsored by Northwest Federal Savings. Chuck hosts the show, provides the tapes, writes and produces the show.

In 1925 every state had at least one radio station. Illinois had the most with 56...In 1928 William MacDonald, living in San Diego, CA, has tuned in on his radio set 650 stations in 37 countries...A recent selection of the Nostalgia Book Club (now Movie/Entertainment Book Club) just offered The Great Radio Comedians by Jim Harmon...I asked about Barry Brooks, who at the time was supposed to have the largest collection of radio shows.

**From Vol 1 No. 5, August, 1970: New Friends:** Rolfe Blaess\*, Gerry Kramer\* (starting a newsletter for collectors of radio premiums), Tom Cole\* (involved in the Air Force/Strategic Air Command and has written several articles on OTR), Meade Frierson III\* (lawyer specializing in science fiction and horror; puts out magazine about radio sci fi called "Static Flutter and Pop"), Jim Lane\*, Father William O'Rourke\* (responsible for many Jack Benny in circulation), Don Brush\* (has over 2000 shows), Tom Rockey\*. **Old Friends:** Ed Corcoran (started collecting in the 50's and knew all 54 collectors at that time), John Furman (has 8 tape recorders - Don Maris has 9), Roger Hill (will be teaching a class on OTR at San Francisco State College), Fred Province (active in scouting and is the squadron advisor for the Aviation Explorer Squadron 872 B.S.A.).

"Concert" reel tape is 79 cents in lots of 50 (1200"). Don't forget a dehumidifier near your tapes if they are not air-conditioned.

**A Backward Glance** from Technician Engineer (June 1970). Leo Rosenberg at KDKA, Pittsburgh became the first radio news broadcaster of record in 1920. Other early newsmen and radio columnists were Mark Hawley, Frank Singiser, Gabriel Heatter, Boake Carter, Walter Winchell and John B. Kennedy. By 1935 news, sports and weather reports accounted for about 8 1/2 % of network broadcasting time. All news broadcasts were live until 1937 when NBC broadcast a transcribed description of the Hindenburg Zeppelin crash on May 6, 1937. Herbert Morrison was the Chicago announcer whose voice was heard. Radio sometimes went to elaborate extremes to cover an event. For the inauguration of President Franklin Roosevelt in January, 1937, for example, one network set up one complete master control booth under the East steps of the Capitol in Washington, a cue transmitter on top of the 555-foot high Washington Monument, a



blimp equipped with a short-wave transmitter, employed two commentators who could speak French and Spanish, used 18 announcers, 20 engineers and used 30 microphones.

**COLLECTORS OF THE PAST - UPDATES:** In my reminiscing section I will often refer to collectors with whom I have lost touch. Here are updates. **Fred Province** is still actively in the hobby and lives in California. I got a nice Christmas card from **Roger Hill**, still living in San Francisco. Roger is still teaching at City College and is working on a second M. A. He hopes to get back into OTR soon. **Boyd Magers**, 1901 Paige Pl. NE, Albuquerque, NM 87112 still collects OTR but specializes in selling video tapes, mostly of old movies, TV shows, etc. Send \$2 (refundable) for a catalog. **Don Racette** hasn't traded tapes for 15 years. He will be retiring from school teaching in 2 years and will do DeeJay work full time. **Bruce Ruggles** wishes all his trading friends well. Bruce stopped collecting in 1980 when he started teaching radio broadcasting at Canadore College in Ontario. Still do not have any word about **Bill Hennessey**, **Bill Hillman**, **Peter Bayer**, **Vern Eldridge**, **Wilbur Nitsch** and **Harry Sova**.

**CONVENTION '88:** The audio convention tapes are ready. The cost for reel to reel is \$35 for 7 reels. They are all 1800', stereo, 3-3/4 ips. Cassettes are available for \$4.00 each per 90 minute segment. A list of contents for cassette copies is available for a SASE. Send to **Bob Burnham**, Box 2645, Livonia, MI 48151...If you want video tapes, write **Don Ramlow**, 509 Velvet Ave., Portage, MI 49002. The convention fills two 6-hour video cassettes. Cost is \$35 including postage and packaging. Allow 3 weeks for delivery.

**CONVENTION '89:** Full details follow: The dates are **October 19-21, 1989** at the Holiday Inn North, Newark. It will start on Thursday around **12 noon**. Friday will now be a full day with dealers tables running from **9 to about 4:30** and workshops running from **9 to about 5:50**. The Saturday hours for dealers will still be **9 to 3**; workshops on Saturday will be from **9 to 5:50**. Possible re-creations will include *The March of Time*, *Ellery Queen*, *My Little Margie*, *My Client Curly* or another *Norman Corwin* show, *Gateway to Hollywood* and perhaps *Archie Andrews*. **Norman Corwin** and **Gale Storm** will be approached to be two of our west coast guests. Our theme will be *Radio and the War Years*. **Doris Milberg** is thinking of doing a panel on *War News* with newscasters as guests. **George Edwards**, in radio for many years, especially with **WQXR**, has expressed interest in being on the panel. **Gary Yoggy** is thinking of doing a related workshop of radio during the war years emphasizing its patriotic and propagandistic role. **Jack French** has offered to do a workshop on radio traitors of WWII. **Roger Hill** from England has expressed interest in BBC broadcasting during WW II. The **Dave Warren** players will perform two or three skits. **Lee Munsick** hopes to do a workshop/panel on *Arthur Godfrey*. **Ron Lackmann** may do a workshop on acting in radio. **Peg Lynch** has expressed interest in doing *Ethel and Albert*.

**Cost for Thursday is \$24** which includes dinner. Choices are **stuffed fillet of sole; London broil; chicken cordon bleu**. **I must know your choice**. **Cost for Friday is \$35** for the entire day and buffet dinner (9 a.m. to 10:30 p.m.). **Cost for Saturday is the same as last year, \$39**, for the entire day and buffet dinner (9 a.m. - 10:30 p.m.). Full cost for all three days is **\$98**. **Daytime only (9 - 5:30 p.m. for both days) is \$8 for each day (paid in advance); \$10 for each day if paid at the door**. Hotel costs are \$58/62. Dealers tables are still \$35 each for one or two days **plus** registrations fees. Complimentary coffee will be available on Thursday; complimentary coffee and Danish will be available Friday and Saturday. There will be a cash bar Thursday, Friday and Saturday from about 5:50 - 7 p.m. with complimentary hors d'oeuvres Friday and Saturday. There will be a \$3 discount for the buffet dinner on Friday and Saturday for those over 62 or under 16.

Capacity for Friday's dinner is 220 so it is important that you send in your reservation as soon as possible. We were filled for Friday last year. Capacity for Saturday's dinner is 400. One major change is the dinner table seating. When you preregister, indicate any people with whom you would like to sit and what night (Friday or Saturday or both). A table number will be on your ticket given to you at the door. Late registrants and those who do not specify seating, will be given table numbers at our discretion. We will do our best to sit you with the people you wish.

We will again have sale of T-shirts, pins and pictures. Different colored Friends of Old-time Radio T-shirts are being made; many large and extra large. We may have books and/or records for sale also. The raffle will again be held with drawings on Thursday, Friday and Saturday. Let us



know if you can donate prizes...We will also make one or two donations again to deserving organizations.

All suggestions will be considered. Please send them to me. Also, if you wish to help, run a workshop, etc., please let me know.

**You may send** in your registration as soon as you want. Dealers tables will **not** be held for you unless the money is received in advance. Also your dinner table cannot be guaranteed unless money is received in advance. Send all registration to Jay Hickerson, Box 4321, Hamden, CT 06514.

One major project before the convention is to incorporate and become nonprofit.

**RADIO IS ALIVE AND WELL:** NPR will offer a 5-part festival of radio plays by Samuel Beckett on five consecutive Sundays starting April 2...Veteran sportscaster **Walter (Red) Barber** and Spanish-language broadcasting pioneer **Nathan Safir** have been named recipients of this year's National Association of Broadcasters' Broadcasting Hall of Fame Award. The award will be presented at the NAB's annual convention on May 1.

America's longest-running locally produced radio show, WNEW-AM New York's "Make Believe Ballroom," celebrated its 54th anniversary on February 3 with a live broadcast from the city's Rainbow Stars Cabaret. The program debuted from the men's washroom of the Flemington, NJ courthouse during the 1935 trial of Bruno Hauptmann. WNEW provided live remote coverage of the sensational trial and - at the suggestion of fledgling announcer Martin Block - filled the gaps between bulletins by playing records which he hurriedly purchased at a nearby record store. He introduced each recording as if the bands actually were playing in a crowded ballroom under a large crystal chandelier. Today the program is hosted by Les Davis who officiated at the anniversary festivities. Key event was the institution of the "Make Believe Ballroom Hall of Fame." 54 people who have made outstanding contributions to American popular music were honored, including Frank Sinatra, Liza Minnelli, Ella Fitzgerald, Peggy Lee and Sammy Davis Jr...Washington-based Advanced Broadcast Media launched its America Make Believe Ballroom March 16. It is a nationally syndicated program delivered via tape. The weekly, two-hour nostalgia program is hosted by Bob Jones, former host of WNEW's show...After an eight-year battle with CBS, **Stephen Silverman** has won the right to bring **Amos 'n' Andy** to Broadway. He hopes to open the stage musical, "Fresh Air Taxi," in the fall. See the article on the last page.

**Paul Harvey** topped the list of most-listened-to network radio programs for ages 12 and over. Close to six million listeners listened to the top show, Paul Harvey News at 8:30 a.m. Harvey took the next 4 places also...**WEVD**, owned by the Yiddish newspaper "The Forward," celebrated over 60 years of broadcasting with a re-creation of the golden age of radio at the Jewish Museum in New York on Feb. 26th. Music, drama, news and commercials from the late 1940's to the early 1960's were performed in English and Yiddish...**Charles Michelson**, 9350 Wilshire Blvd, Beverly Hills, CA 90212 is the biggest supplier of OTR shows to radio stations. Latest offerings are 52 episodes each of The Abbott and Costello Show; Arch Oboler's Lights Out; Voyage of the Scarlet Queen; Captain Horatio Hornblower. Charles is looking for broadcast copies of The Hermit's Cave to add to the ones he has. If you have any, please let him know and he will remit a fair market value for them. Outside California you may call him at 1-800-648-4546. Inside California the number is 213-278-4546.

**PUBLICATIONS RECEIVED:** **SPERDVAC Radiogram**, Jan; review of their last convention..Feb; article on Dresser Dahlstead..Mar; articles on Red Barber and Jean Vander Pyl...**Milwaukee Area Radio Enthusiasts**; Feb; articles on the big bands, especially the "ghost" big bands of today...**Illustrated Press**, Feb; article on Father Coughlin...Mar; articles about Jack Benny with interviews of Phil Harris and Joan Benny...**Metro Washington OTR Club**, Mar-Apr; articles on Frank Bingman; FDR's Fireside Chat - first part of a log and much information...**Old Time Radio Digest**, Jan-Feb; article on War of the Worlds - Part 1, by Gary Yoggy...**On the Air**, Mar-Apr; article on Radio in the War Years, part 2...**Nostalgia Digest**, Apr-May; articles on radio stars in the movies; Leo Gorcey; Artie Shaw.



**BOOKS AND MAGAZINES:** **Jon Swartz** has written an article on recorded radio programs which will appear in the Encyclopedia of Recorded Sound by the end of the year. It will be published by Garland Publishing, 136 Madison Ave, New York, NY 10016...**Tom Tumbusch (Tomart Publications)**, 409 E Stroop Rd, Box 2102, Dayton, OH 45429 has a new book "Illustrated Radio Premium Catalog and Price Guide" for \$36. This excellent book covers over 98% of all premiums issued, the stories behind many of them, and the available and cost in good, fine and mint condition. There are over 2000 illustrations, many in color. I well recommend the book.

**LOGS:** **Ray Stanich**, 173 Columbia Hts, Brooklyn, NY 11201 has a log of **Dark Fantasy** (1941) for a SASE. Also send Ray a SASE for a revised price list of all his logs; all prices are considerably lower.

**ORGANIZATIONS AND CONVENTIONS:** Don't forget **Cincinnati's 3rd Annual OTR and Nostalgia Convention** on April 21-22, 1989 at the Marriott Inn, 11320 Chester Rd, in Cincinnati, OH 45246. Special guest will be Willard Waterman. There will be dealers tables and re-creations. For more information contact **Bob Burchett** at 513 961-3100.

**CATALOGS AND NEW SHOWS:** **Bob Burnham (BRC PRODUCTIONS)**, Box 2645, Livonia, MI 48151 has a new cassette and video catalog (February 1989) Highlights include many new Rocky Jordan. Bob also has many classic videos...**Dave Siegel**, Box 610, Croton on Hudson, NY 10520 sent a few updates. Some new shows include many more Great Moments in Music; Heinz Magazine of the Air; Hearts on Harmony (400); more Hopalong Cassidy; Hormel Girl's Band...**Thom Salome**, 196 Lawrence Ave, Brooklyn, NY 11230 has a catalog for \$6.50. It contains 1600 reels and 6400 cassette possibilities. He will also send a list of all available titles on a series for a SASE. Thom has 210 Fred Allen shows.

**NEW ADDRESSES:** **Michael Murphy**, 117 Edinboro St, Newtonville, MA 02160...**Robert Kramer** (wrong address was in last issue) 4415 Ocean Ave, Cheyenne, WY 82001...**Rev. Raymond Woods**, 5600 W. Genesee St, Camillus, NY 13031.

**NEW FRIENDS AND RETURNEES:** **Charles Summers, III**, 122 S. Richland Ave, York, PA 17404...**William Gething**, RD#1 Box 1279, Moscow, PA 18444...**Timothy Coco**, Box 1585, Haverhill, MA 01831...**Ward Erwin**, 1603 W. Oak St, Kissimmee, FL 32741. Ward has over 400 hours of Bob and Ray and is looking for more; also wants Glamour Manor, Orth Bell (Uncle Jonathan) and any material by Simi Beau and Stan Freberg. Ward and I go back to 1971...**Scott Woodman**, 5115 Klump Ave, No. Hollywood, CA 91601...**Jim Weaver**, 405 Dunbar Dr., Pittsburgh, PA 15235, has over 1000 personal addresses of celebrities (most are home addresses) who usually will send FREE, authentically autographed photos for the asking. Cost is \$15...**Glenn Laxton**, 25 Catamore Blvd, East Providence, RI 02914... **Dr. Leslie Rabkin**, 2200 24th Ave East, Seattle, WA 98112 is looking for any information on a show hosted by a psychologist, Joseph Jastrow, possible called "Keeping Mentally Fit," in the late 1930's on NBC...**Shirley Bentley**, 2700 West Forrest Hill #10, Peoria, IL 61604...**Don Richardson**, Box 2281, Syracuse, NY 13220. Don hosted "Sounds of Yesterday" with Allen Rockford many years ago...**Bradley Duell**, Alta Ave, Queensbury, NY 12804...**Louis Lenhard**, 1408-A Pigeon Pt, Beaufort, SC 29902...**Annette and Bill Greehy**, 4879 Broadway 2E, New York, NY 10034 wants any information about or shows with Ray Heatherton, Annette Hanshaw, Jerry Cooper, Jimmy Farrell and Maureen O'Hara...**Mike Langer**, 1061 Everglades Dr, Pacifica, CA 94044...**Emerson Williams Jr.**, 6721 16th St. NW, Washington, DC 20012.

**C. Alain Ladd**, 1535 E. Canfield Ln, Anaheim, CA 92805 is looking for any information about Big Jon and Sparkie and No School Today as well as whereabouts of anyone still living who was connected with the program...**Donald Schank**, 23 Highway 33, Freehold, NJ 07728 has 150 Boston Blackie syndicated shows (ZIV produced 220) and is looking for the others. Don was the subject of a nice article in the Asbury Park Press (2/16/89)...**David Frederick**, RD1 Box 27, Meshoppen, PA 18630 wants cassettes of The Adventures of Doc Savage...**Ron Hauser**, 1425 Rainier Dr #9, Tacoma, WA 98466...**Cheryl Wenner**, 1831 North 21st St, Allentown, PA 18104...**Clifford A. Smales Jr.**, 8 Daniel Blvd, Bloomfield, CT 06002 is looking for the



companion episode to YTJD, "The Deadly Swamp Matter." He also has 20 episodes of Archie Andrews and wants to trade for more. Collectors may contact Clifford by print, braille or cassette. Cassettes can be sent as Free Matter for the Blind...**David Paulson**, 6285 Cardinal Ln, Columbia, MD 21044.

**OLD FRIENDS:** **Ruben Thomas**, 830 Manida St #1, Bronx, NY 10474 wants any historical information on "Calling All Cars." Also he wants tapes of "Destination Freedom." There are about 112 readily available...**Dale Hilk**, 424 E 1st St, Waconia, MN wants any radio shows interrupted by WWII news bulletins.

**IN FOND MEMORY:** **Beatrice Lillie**, Jan 20, 94; Canadian - born actress-singer; did some radio...**John Loder**, Dec, 90; actor; hosted Silver Theater from 1942-45 and was on three Suspense...**Pegeen Fitzgerald**, Jan 30, 85; popular talk show host with her husband from 1938 - 1984...**Jack Douglas**, Jan 31, 80; writer and humorist (Red Skelton, Jack Carson, Bob Hope)...**Lester White**, Jan 25, 77; comedy writer (Jimmy Durante, Our Miss Brooks, Red Skelton)...**George O'Hanlon**, Feb 11, 76; Actor-writer; (Me and Janie)...**Frank Hursley**, Feb 3, 86; created and wrote many radio and TV shows with his wife, Doris (American Women; Those Websters; Service To the Front)...**Kathleen Hite**, Feb 18, radio and TV writer (Gunsmoke)...**Maurice Evans**, Mar 12, 87; classical actor and produced (Helen Hayes Theater; Keep 'em Rolling)...**Archie Bleyer**, Mar 20, 79; founder of Cadence Records and musical director for Arthur Godfrey (radio and TV) and Casey, Crime Photographer.

\* \* \* \* \*

JAY HICKERSON, Box 4321, Hamden, CT 06514 (203) 248-2887 \$10/year

WANTED: JACK BERCH SHOW ON AFPS: WORLD TRANS-  
CRIPTION # 3169/3178 : ARTHUR TRACY-STREET  
SINGER WITH ACCORDION ACCOMPANIMENT ONLY:  
DECCA 78 RPM ALBUM #A-921 BY THE CASTILIANS  
TITLED "INSTRUMENTAL TANGOS". MANHATTAN BERRY  
GO-ROUND PROGRAM FEATURING ACCORDIONIST IN  
BACKGROUND. LAST BUT NOT LEAST: ALL LP'S,  
ET'S, AIRCHECKS FEATURING THE ACCORDION, (NO  
POLKA RECORDS WANTED). SEE SECTION BELOW FOR  
78's CURRENTLY DESIRED.

WANTED: Accordionist Charles Magnante  
on early green label COLUMBIA, CROWN  
& BRUNSWICK labels. The THREE  
RADIO STARS on MADISON & RADIEX.  
Brunswick 59035 & 59036 by Accordionist  
A. Zibulsky, Arthur Tracey The Street Singer  
on Vocalion & Brunswick, The Argentinians  
on Crown, Torre & Magnante Duet on Victor,  
Accordion recordings on Victor V-12000  
series. STANLEY BOZYNSKI, 8196  
Thorn tree Ct., Grosse Ile, MI 48138



# The play's the thing

**Appeals court will allow writer to continue with play based on 'Amos 'n' Andy' characters; it finds that CBS lost copyright on characters through disuse**

Stephen M. Silverman, one-time chief entertainment reporter for the *New York Post* and more recently the author of books on major motion picture figures, is looking ahead to the production of the musical he has written for Broadway based on the characters of that legendary (if a reminder of what is now seen as a racist past) radio and television show, *Amos 'n' Andy*. The book was written eight years ago and the score, by Jabbo Smith, five years ago. But it was not until the U.S. Court of Appeals for the Second Circuit, in New York, last month issued a decision in Silverman's battle with CBS over alleged copyright and trademark infringement that Silverman and his lawyer believed Silverman could try to mount the show. So did the appeals court. Silverman, wrote Judge Jon Newman for the three-judge panel, "will now have ample latitude to proceed with his musical."

*Amos 'n' Andy* began on radio on NBC in 1928, with white actors playing the title roles and such stereotypical members of their black community as Kingfish, Lighter, and Algonquin J. Calhoun. And it became one of radio's most popular programs before ending its run on CBS in 1955. CBS also aired a television version of the show (from 1951 to 1953), although it continued in reruns and nonnetwork syndication. The taste for ethnic humor was changing, and *Amos 'n' Andy* was last seen on television (except for a brisk black market distribution of the program) in 1966.

It was not necessarily poor ratings that did in the program. CBS, which has not broadcast the program or licensed it for broadcast in 23 years, had taken it off the air in response to complaints from civil rights groups, including the National Association for the Advancement of Colored People. Indeed, one request for a license to use the *Amos 'n' Andy* characters that CBS rejected had been made by Silverman, early in his project. And it was the years the program had spent on the shelf that spelled defeat for CBS in the appeals court last month.

U.S. District Court Judge Gerald L. Goettel, who presided at the trial of CBS's suit, had awarded the company virtually a complete victory. He held that the pre-1948 scripts were in the public domain because the copyrights, obtained from the creators of the show, Freeman F. Gosden (the radio "Amos") and Charles J. Correll ("Andy"), had not been renewed. But he also held that CBS had common law copyrights in the radio scripts written after 1948, and had obtained copyright registrations and renewals for the television programs. As for the trademark side of the case, Goettel ruled that the name *Amos 'n' Andy*, as well as the names and appearances of other characters in the ongoing story and "other distinctive features of the...radio and television shows" are protect-

able marks, that CBS had not abandoned them, despite the length of time that had passed since it last used them.

Goettel issued a broadly worded injunction that in effect barred Silverman from attempting to produce a musical based on the *Amos 'n' Andy* characters. He also awarded CBS damages and lawyers' fees totaling \$19,403 because Silverman had used a portion of dialogue from a post-1948 radio script in a draft of his play and was, therefore, liable for copyright infringement.



Gosden (l) and Correll in 1956

Silverman did not challenge that award. But he challenged the rest of Goettel's order and, in the main, prevailed.

The appeals court panel, consisting of Judges Wilfred Feinberg and George Pratt, as well as Newman, saw the trademark issue as fundamental. The decision noted that CBS had not used the "Amos 'n' Andy" marks in the 21 years leading up to the trial in district court and had no plans to use them in the foreseeable future.

"Ordinarily, 21 years of nonuse would easily surpass the nonuse requirement for finding abandonment," Newman wrote. And while courts have found exceptions in cases of trademark owners whose hopes of using their marks had been frustrated by lack of business opportunities, the panel held that that was not the situation in the case of "Amos 'n' Andy." CBS, Newman wrote, "has decided, albeit for socially commendable motives, to forgo whatever business opportunities may currently exist in the hope that greater opportunities, unaccompanied by adverse public reaction, will exist at some undefined time in the future."

It was more than simple abandonment that affected the panel's view on the trademark issue. It was also influenced by the context in which the dispute arose—"one in which the allegedly infringing use is in connection with a work of artistic expression," as Newman wrote. For although the use of a trademark to identify a commodity or a business is, "ordinarily," a form of commercial speech, Newman said, enforcement of trademark rights carries "a risk of inhibiting free expression" where "artistic freedom" is involved.

As for the copyright issue, the panel's decision was less clear cut. The panel agreed that the material from the pre-1948 radio shows was in the public domain. But the material in the subsequent radio and television programs was protected, the panel held, only to the extent it goes beyond

"what is contained in the pre-1948 radio scripts and that satisfy the minimal copyright requirement of originality." Even that limited degree of protection is not without some uncertainty as to the television show. Silverman's attorney, Barry I. Fredericks, had contended that CBS lost its copyright in the television programs by "bicycling" them to local stations—and thus not "controlling" them—without copyright notice attached. The panel concluded that the circumstances that would illuminate the validity of those copyrights had not been sufficiently developed on the record; development of that record, Newman said, "may await the production of Silverman's musical."

Silverman and his attorney, Frederick, take the appeals court decision as a "go" on the proposed Broadway musical. "I'm delighted. Surprised and delighted," said Silverman last week. "But now the real work starts." His first task is to find a producer. Silverman has occupied some of his time over the past eight years writing books—"The Fox that Got Away," a life of Darryl Zanuck, and, just completed, an authorized biography of motion picture director David Lean.

CBS does not see the road ahead as clearly as Silverman and Frederick. "We may have a further dispute with Mr. Silverman," said George Vradenburg III, CBS vice president and general counsel. He noted that either side has until May to decide whether to seek review by the Supreme Court. □